

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B06

PLR-129005-07

Date:

August 06, 2007

Legend

Old Parent =

Sub 1 =

Sub 2 =

Sub 3 =

New Parent =

Date 1 =

Date 1A =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Business A =

Dear

This letter responds to your authorized representative's letter dated May 10, 2007, requesting that the Commissioner make determinations that: (1) Sub 1, Sub 2 and Sub 3 have all joined in the making of an initial consolidated return filed by Old Parent for the year ending Date 2 as well as in making the subsequent consolidated return for the year ending Date 3, (2) Sub 1, Sub 2 and Sub 3 can properly join Old Parent in the making of an amended consolidated return for the short taxable year beginning Date 4 and ending Date 5, (3) Old Parent, Sub 1, Sub 2 and Sub 3 can properly join New Parent in the making of an amended consolidated return for the short taxable year beginning Date 6 and ending Date 7, (4) Old Parent, Sub 1, Sub 2 and Sub 3 have all joined in the making of a consolidated return filed by New Parent for the tax years ending Date 8 and Date 9, respectively. Additional information was submitted in a letter dated July 2, 2007. The information submitted in the above-mentioned letters, is summarized below.

Old Parent is a domestic corporation conducting Business A. Sub 1, Sub 2 and Sub 3 are wholly owned subsidiaries of Old Parent. Old Parent acquired all of the stock of each of Sub 1, Sub 2 and Sub 3 on Date 1. Old Parent filed an initial consolidated tax return on behalf of itself and Sub 1, Sub 2 and Sub 3 for the calendar year ending Date 2 that (i) included the income and deductions of Old Parent and each of Sub 1, Sub 2 and Sub 3 for the calendar year ending Date 2 and (ii) included each of Old Parent, Sub 1, Sub 2 and Sub 3 on a Form 851 ("Affiliations Schedule") attached to the Date 2 consolidated return. However, Forms 1122 ("Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return") were inadvertently not filed for Sub 1, Sub 2 and Sub 3 with the Date 2 Old Parent consolidated tax return.

Old Parent timely filed a consolidated tax return on behalf of itself and Sub 1, Sub 2 and Sub 3 for the calendar year ending Date 3 that (i) included the income and

deductions of Old Parent and each of Sub 1, Sub 2 and Sub 3 for the calendar year ending Date 3 and (ii) included each of Old Parent, Sub 1, Sub 2 and Sub 3 on Form 851 ("Affiliations Schedule") attached to the Date 3 consolidated return.

On Date 5, New Parent, a newly formed corporation, acquired all the stock of Old Parent, and indirectly the stock of Sub 1, Sub 2 and Sub 3. Accounting Firm failed to advise New Parent that a consolidated tax return needed to be filed on behalf of Old Parent, Sub 1, Sub 2 and Sub 3 for the short taxable period beginning Date 4 and ending Date 5. Rather, New Parent timely filed a consolidated return for the calendar year ending Date 7 ("Original New Parent Consolidated Return") on behalf of itself, Old Parent, Sub 1, Sub 2 and Sub 3 that included the income and deductions of New Parent, Old Parent, Sub 1, Sub 2 and Sub 3. Attached to the Original New Parent Consolidated Return was a form 851 ("Affiliations Schedule") that included New Parent, Old Parent, Sub 1, Sub 2 and Sub 3. However, Forms 1122 ("Authorization and Consent of Subsidiary Corporation To Be included in a Consolidated Income Tax Return") were inadvertently not filed for Old Parent, Sub 1, Sub 2 and Sub 3 with the Original New Parent Consolidated Return for the calendar year ending Date 7.

New Parent has timely filed consolidated returns for the calendar years ending Date 8 and Date 9, respectively, on behalf of itself, Old Parent, Sub 1, Sub 2 and Sub 3 that (i) included the income and deductions of New Parent, Old Parent, Sub 1, Sub 2 and Sub 3 for the calendar years ending Date 8 and Date 9, respectively, and (ii) included each of New Parent, Old Parent, Sub 1, Sub 2 and Sub 3 on Form 851 ("Affiliations Schedule") attached to the respective Date 8 and Date 9 consolidated returns.

Representations

1. All of the income and deductions of Old Parent, Sub 1, Sub 2 and Sub 3 for the Date 2 and Date 3 calendar years were included in the Date 2 Old Parent consolidated return and the Date 3 Old Parent consolidated return, respectively.
2. All of the income and deductions of New Parent, Old Parent, Sub 1, Sub 2 and Sub 3 (including, in the case of Old Parent and Sub 1, Sub 2 and Sub 3, for the short taxable period beginning on Date 4 and ending on Date 5) were included in the Original New Parent Consolidated Return for the calendar year ending Date 7.
3. All of the income and deductions of New Parent, Old Parent, New Parent, Sub 1, Sub 2 and Sub 3 for the Date 8 and Date 9 calendar years were included in the Date 8 New Parent consolidated return and the Date 9 New Parent consolidated return respectively.

4. None of Old Parent, Sub 1, Sub 2 or Sub 3 filed a separate income tax return for the calendar years ending Date 2 or Date 3.
5. None of New Parent, Old Parent, Sub 1, Sub 2 or Sub 3 filed a separate income tax return for the calendar years ending Date 7, Date 8 and Date 9.
6. Old Parent, Sub 1, Sub 2 and Sub 3 were included on Forms 851 that were attached to the Old Parent consolidated returns for the consolidated return years ended Date 2 and Date 3.
7. New Parent, Old Parent, Sub 1, Sub 2 and Sub 3 were included on Forms 851 that were attached to the Original New Parent Consolidated Return, the New Parent consolidated return for the calendar year ending Date 8 and the New Parent consolidated return for the calendar year ending Date 9.
8. Old Parent will file a consolidated return for the short taxable period beginning Date 4 and ending on Date 5 within 60 days after receipt of the determinations requested herein.
9. Old Parent, Sub 1, Sub 2 and Sub 3 will be included on a Form 851 that will be attached to the Old Parent consolidated return for the short taxable period beginning on Date 4 and ending on Date 5.
10. All of the income and deductions of Old Parent, Sub 1, Sub 2 and Sub 3 for the short taxable year beginning on Date 4 and ending on Date 5 will be included in the Old Parent consolidated return beginning Date 4 and ending Date 5.
11. New Parent will file a consolidated return for the short taxable period beginning Date 6 and ending on Date 7 within 60 days of the receipt of the determinations requested herein.
12. New Parent, Old Parent, Sub 1, Sub 2 and Sub 3 will be included on a Form 851 that will be attached to the New Parent consolidated return for the short taxable year beginning on Date 6 and ending on Date 7.
13. All of the income and deductions of New Parent, Old Parent, Sub 1, Sub 2 and Sub 3 for the short taxable year beginning Date 6 and ending Date 7 will be included in the New Parent consolidated return for the short taxable year beginning Date 6 and ending Date 7.
14. New Parent's Date 5 acquisition of all the stock of Old Parent was not a "reverse acquisition" within the meaning of Treas. Reg. § 1.1502-75(d)(3).

15. Old Parent, Sub 1, Sub 2 and Sub 3 were affiliated for purposes of I.R.C. § 1504(a) for the period from Date 1A until Date 5.
16. New Parent, Old Parent, Sub 1, Sub 2, and Sub 3 were affiliated for purposes of I.R.C. § 1504(a) for the period from Date 6 until Date 9.
17. Except for the failure to timely file Forms 1122 with the Date 2 Old Parent consolidated return, Old Parent, Sub 1 and Sub 2 were eligible to file a consolidated U.S. corporation income tax return for the taxable year ending Date 2.
18. Except for the failure to timely file Forms 1122, New Parent, Old Parent, Sub 1, Sub 2 and Sub 3 are eligible to file a consolidated U.S. corporation income tax return for the taxable year beginning Date 6 and ending Date 7.

Applicable Law

Section 1.1502-75(a)(1) of the Income Tax Regulations, provides, in part, that an affiliated group of corporations which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member of the group during any part of the taxable year for which the consolidated return is to be filed consents, in accordance with section 1.1502-75(b), to the regulations issued under section 1502.

Section 1.1502-75(a)(2) provides that a group which filed (or was required to file) a consolidated return for the immediately preceding taxable year is required to file a consolidated return for the taxable year, unless it has been granted permission by the Commissioner to discontinue filing consolidated returns.

With regard to the consent of a corporation for a group's first consolidated tax year, section 1.1502-75(b)(1) provides, as a general rule, that the consent of a corporation shall be made by such corporation joining in the making of the consolidated return for such year and that a corporation shall be deemed to have joined in the making of such return for such year, if it files a Form 1122 in the manner specified in section 1.1502-75(h)(2).

Temp. Regulation section 1.1502-75T(h)(2) provides that a Form 1122 must be executed by each subsidiary and attached to the consolidated return for that first taxable year of the group. These provisions also provide that a Form 1122 shall not be required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding taxable year.

Section 1.1502-75(b)(2) of the regulations provides that if a member of the group fails to file the Form 1122, the Commissioner may under the facts and circumstances determine that such member has nevertheless joined in the making of a consolidated return by such group. Factors that the Commissioner will take into account in making this determination include the following:

- (i) The income and deductions of each member for such taxable year were included in the consolidated return;
- (ii) No separate return was filed by any member for that taxable year; and
- (iii) Each member of the group was included in the affiliations schedule, Form 851 for such taxable year.

Where the Commissioner under the facts and circumstances determines that the member has joined in the making of a consolidated return, such member will be treated for purposes of Treas. Reg. §1.1502-75T(h)(2) as if it had filed a Form 1122 for such year. Treas. Reg. § 1.1502-75(b)(2) flush language.

A consolidated return must include the common parent's items of income, gain, deduction, loss, and credit for the entire consolidated return year, and each subsidiary's items for the portion of the year for which it is a member. If the consolidated return includes the items of a corporation for only a portion of its tax year (i.e., such tax year determined without taking this section into account), items for the portion of the year not included in the consolidated return must be included in a separate return (including the consolidated return of another group). Treas. Reg. § 1.1502-76(b)(1)

Rulings

Based solely on the information submitted and the representations made, (in particular the representations that, (1) Old Parent will file a consolidated return for the short taxable period beginning Date 4 and ending on Date 5 within 60 days after receipt of the determinations requested herein and that, (2) New Parent will file a consolidated return for the short taxable period beginning Date 6 and ending on Date 7 within 60 days of the receipt of the determinations requested herein.) this office rules that:

- (1) Pursuant to Treas. Reg. § 1.1502-75(b)(2), Sub 1, Sub 2 and Sub 3 are treated under Treas. Reg. § 1.1502-75T(h)(2) as if they had filed Forms 1122 with the consolidated return of the Old Parent consolidated group for the calendar year ended Date 2.
- (2) Each of Sub 1, Sub 2 and Sub 3 properly joined in the making of Old Parent's consolidated return for the calendar years ending Date 2 and Date 3, respectively.

- (3) Each of Sub 1, Sub 2 and Sub 3 can properly join in the making of Old Parent's consolidated return for the short taxable period beginning Date 4 and ending Date 5.
- (4) Pursuant to Treas. Reg. § 1.1502-75(b)(2), Old Parent, Sub 1, Sub 2 and Sub 3 will be treated under Treas. Reg. § 1.1502-75T(h)(2) as if they had filed Forms 1122 with the consolidated return of the New Parent consolidated group for the short tax year beginning Date 6 and ending Date 7.
- (5) Each of Old Parent, Sub 1, Sub 2 and Sub 3 can properly join in the making of New Parent's amended consolidated return for the short taxable year beginning Date 6 and ending Date 7.
- (6) Each of Old Parent, Sub 1, Sub 2 and Sub 3 properly joined in the making of New Parent's consolidated return for the calendar years ending Date 8 and Date 9 respectively.

Caveats

We express no opinion about the tax treatment of the facts, described above, under other provisions of the Code or regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, these facts that are not specifically covered by the above ruling. In particular, we express no opinion about the timeliness of any refund claims pursuant to taxpayer's filing of any amended returns.

The rulings contained in this letter are based on information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the taxpayer's ruling request. Verification of this material may be required as part of the audit process.

Procedural Statements

This ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative

Sincerely,

Steven J. Hankin
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel (Chief Counsel)